APPENDIX

CANADIAN EMBASSY AMBASSADE DU CANADA

[SEAL]

Washington, D. C.
June 15, 1965

No. 196

Sir:

I have the honour, acting on instructions of and on behalf of the Government of Canada, to present the following observations of the Canadian government on the pending petition to the Supreme Court of the United States of Amercia, October term 1965, for a Writ of Certiorari to the Superior Court of Pennsylvania, the Crown Life Insurance Company, a Canadian corporation petitioner, versus Alicia Varas, respondent. I have the honour to request you to transmit this note to the Supreme Court of the United States for its consideration.

The Government of Canada wishes to express its grave concern regarding earlier rulings in this case in the Court of Common Pleas of Montgomery County, Pennsylvania, and the Superior Court of Pennsylvania; and in the Supreme Court of Pennsylvania (which dismissed a petition for leave to appeal, without opinion on March 22). The Government of Canada is anxious that the judgment of the Superior Court of Pennsylvania be reviewed on its merits by the Supreme Court of the United States. It is the hope of the Canadian government that the Supreme Court of the United States may take into account its views when the Court considers the petition in question.

The Honorable
Dean Rusk,
The Secretary of State
Washington, D. C.

In particular, without reviewing in detail the material set out in the statement of petition, the Government of Canada wishes respectfully to draw to the attention of the Supreme Court of the United States the following considerations.

Although this petition in itself might appear to involve only the matter of a single policy of insurance—the cash surrender value of which amounts to a mere four thousand dollars—it is the view of the Government of Canada that its implications are of a much greater and more serious magnitude.

The insurance contract in the suit was not made in the United States, nor was it to be performed in the United States. Neither of the parties are citizens or natives of the United States. The contract was made in Cuba by nationals of Cuba and Canada, to be performed in Cuba. The petitioner has proven itself as being ready, willing and able to pay to the respondent the cash surrender value of her policy in pesos in Cuba in accordance with Cuban law. The transaction had no contact whatsoever with the State of Pennsylvania or with the United States. The respondent Varas, a Cuban who presently resides in the State of Florida, was resident in the State of Georgia at the time of the suit. The petitioner has an agent in the State of Pennsylvania, as in many other states and countries.

If the decision of the Pennsylvania Superior Court in the Varas case is allowed to stand, it could have

serious economic consequences for the Canadian insurance industry as a whole. In the case of policies originally expressed in currencies other than that of the place of contract, it could result in an interference with contractual relationships between Canadian companies and nationals of foreign countries and it would open the door to other policyholders (who had purchased similar policies outside the United States and who do not reside there) to evade their own countries' foreign exchange regulations by demanding payment of the cash surrender value of their policies in Pennsylvania. The Canadian insurance companies could then be required to provide United States dollars in settlement, no matter what the stated currency of the policy. This could also bring companies into conflict with the laws of the countries where policies were issued. In the case of Cuba the penalty could be confiscation of the companies' assets there.

Altogether there are ten major Canadian life insurance companies which might be affected by this decision, all of which have written policies originally expressed either in sterling, United States dollars or other currencies, but now subject to foreign exchange control regulations. In all, these involve a total cash surrender liability of considerably in excess of one billion dollars. These liabilities are subject to domestic foreign exchange control regulations in the countries where policies were issued and such obligations, if settled in accordance with Pennsylvania law, as it would now appear to stand, could only be met by companies drawing either on their United States dollars reserves or by their using their Canadian dollar reserves and converting them to United States currency. In so doing they could be in violation of laws of original countries where policies were issued.

It is not the present intention of the Government of Canada to ask for leave to intervene in the case directly. However, because of the potential seriousness of the Varas decision, the Canadian government is most anxious that the case be reviewed on its merits by the Supreme Court of the United States.

I therefore hope that you may consider it feasible and appropriate to transmit this note to the Supreme Court of the United States of America in order that the Court may be able to take into account the views of the Government of Canada when it considers the pending petition.

Please accept, Sir, the renewed assurances of my highest consideration.

/s/ C. S. A. Ritchie

[SEAL]